

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

May 10, 2011

In the Matter of J. H. THOMAS, Minor.

No. 301112

Macomb Circuit Court

Family Division

LC No. 2009-000543-NA

Before: WILDER, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Respondent D. Thomas appeals as of right from a circuit court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The trial court did not clearly err in finding that §§ 19b(3)(c)(i) and (g) were both established by clear and convincing evidence. *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); MCR 3.977(H)(3) and (K). When the child came into care in October 2009, he was living with his mother who was not a fit custodian. Respondent did not maintain a relationship with the child, was not involved in the child's upbringing, and failed to protect the child despite knowing that he was at risk in his mother's care. Respondent was provided with services for reunification. He visited the child through January 2010, but then ceased all contact with the child, the agency, and his attorney and never participated in services. He failed to appear for the termination hearing. Considering respondent's failure to make any progress toward reunification during the year the child was in alternative placement, the trial court did not clearly err in finding that the conditions that led to the adjudication were not likely to be rectified, and that respondent was not likely to be able to provide proper care and custody within a reasonable time given the age of the child. Because grounds for termination were established under §§ 19b(3)(c)(i) and (g), any error in relying on § 19b(3)(j) as an additional ground for termination was harmless. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

There is no merit to respondent's contention that his due process rights were violated because petitioner did not make reasonable efforts to keep him apprised of the proceedings and to reunify him with his child.

"[P]arents have a significant interest in the companionship, care, custody, and management of their children. This interest has been characterized as an element of 'liberty' to be protected by due process." *In re Brock*, 442 Mich 101, 109; 499 NW2d 752 (1993). Procedural due process requires that a party be provided with notice of the nature of the

proceedings and an opportunity to be heard by an impartial decision maker at a meaningful time and in a meaningful manner. *Reed v Reed*, 265 Mich App 131, 159; 693 NW2d 825 (2005). “The state cannot fail to make reasonable attempts to provide adequate notice of earlier proceedings and their consequences and then terminate a parent’s rights on the basis of circumstances that could have been significantly affected by those proceedings.” *In re Rood*, 483 Mich 73, 113-114; 763 NW2d 587 (2009).

Before a court enters an order of disposition in a child protection proceeding, the DHS must prepare a case service plan that includes the “[e]fforts to be made by the agency to return the child to his or her home” and a “[s]chedule of services to be provided to the parent . . . to facilitate the child’s return to his or her home[.]” MCL 712.18f(2) and (3). “Reasonable efforts to reunite the child and family must be made in all cases except” those involving certain aggravating circumstances not present here. MCL 712A.19a(2); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

The record shows that respondent was afforded due process. He had notice of the proceedings when they were initiated as evidenced by the fact that he appeared for the preliminary hearing, the adjudication and dispositional hearing, and the first review hearing. The file contains documentation showing that notice of subsequent review hearings was sent to respondent by first class mail, that a copy of the supplemental petition was served on respondent by first class mail, that a summons for the termination hearing was personally served on respondent, and that notice of the termination hearing was also published. There is no indication that the address used to give respondent notice was invalid and there is nothing in the record to indicate that any mail was returned as undeliverable. A schedule of services for reunification was prepared and the terms of the parent-agency agreement were made known to respondent at the dispositional hearing. The record also shows that petitioner made reasonable efforts to reunify respondent with his son by referring respondent for a psychological evaluation, a substance abuse assessment, counseling, drug screens, parenting classes, and anger management classes, and by affording him supervised visitation. This is not a case in which respondent failed to provide an opportunity to participate in the proceedings before termination and then had his parental rights terminated due to that lack of participation. Rather, respondent was given an opportunity to participate in court hearings and services and then had his parental rights terminated because of his lack of interest in the proceedings and in the child. The fact that respondent chose not to attend or participate in court hearings and services, or to respond to the agency’s attempts to contact him, does not constitute a denial of due process by the state.

Affirmed.

/s/ Kurtis T. Wilder
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood